

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 6624 of 2007(L)

AGAINST THE ORDER DATED 7.2.2007 IN EP 132/06 IN
OS.232/2004 of MUNSIF COURT, CHANGANACHERRY
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PETITIONER:

BALACHANDRAN, S/O.MADHAVAN ACHARI,
AGED 57 YEARS, KOTTAPPURAM VEEDU,
MADAPPALLY VILLAGE, CHANGANACHERY.

BY ADV. SRI.R.ARUN RAJ

RESPONDENTS:

1. PARAMESWARAN NAIR, KARTHIKA VEEDU,
PERUNNAI EAST, CHANGANACHERRY.
2. M.A.NARAYANA KURUP, VASANTHAM VEEDU,
PERUNNAI EAST, CHANGANACHERRY.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27/02/2007, THE COURT ON 27/02/2007 DELIVERED THE
FOLLOWING:

K.P.BALACHANDRAN, J.

W.P.(C)NO.6624 OF 2007

Dated this the 27th day of February 2007

JUDGMENT

Petitioner is the judgment debtor in O.S.232/04 on the file of Munsiff's Court, Changanacherry. In execution of decree in O.S.234/04 it is submitted that the delivery stands posted to tomorrow.

2. Counsel for the petitioner submits that O.S.262/06 filed by the petitioner against the decree holders for a declaration that the suit document in O.S.232/04 is one fabricated fraudulently as a sale deed when actually it was intended as a mortgage deed is pending before the Munsiff's Court, Changanacherry and that an appeal also is filed against the decree and judgment in O.S.232/04 before the District Court, Kottarakkara from which however no stay could be obtained as there was delay of 135 days in filing the appeal and that therefore stay of delivery be ordered.

It is overruling the objection filed by the petitioner that Ext.P1 order is passed by the Execution Court allowing execution of the decree in O.S.232/04 and posted the execution petition for

delivery to 28.2.2007. The said order is passed on 7.2.2007. In view of the delay in filing this writ petition, I do not find any reason why even breathing time has to be given to the petitioner, especially when he was not at all vigilant in prosecuting the case and even appeal from the decree under execution was filed with a delay of 135 days. When the appellate court is not able to pass order of stay in view of delay in filing the appeal it is not proper for the judgment debtor to approach this court filing a writ petition seeking stay of execution. This writ petition in the circumstances is devoid of merit and is dismissed.

K.P.BALACHANDRAN, JUDGE

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